

## § 270.17a-7

## 17 CFR Ch. II (4-1-02 Edition)

(i) Is also a party to the transaction, or

(ii) Has, or within six months prior to the transaction had, or pursuant to an arrangement will acquire, a direct or indirect financial interest in a party (except the registered investment company) to the transactions.

(b) For the purpose of determining the availability of the exemption provided for by this section:

(1) The term “financial interest” as used in paragraph (a) of this section shall not include (i) any interest through ownership of securities issued by the registered investment company; (ii) any interest of a wholly-owned subsidiary of a registered investment company; (iii) usual and ordinary fees for services as a director; (iv) an interest of a non-executive employee; (v) an interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person; (vi) an interest of a bank arising from a loan or account made or maintained by it in the ordinary course of business to or with a natural person, unless it arises from a loan to a person who is an officer, director or executive of a company which is a party to the transaction, or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of a company which is a party to the transaction; or (vii) an interest acquired in a transaction described in paragraph (d)(3) of § 270.17d-1 (Rule 17d-1 under the Act).

(2) Paragraph (a)(4) of this section shall not include a person who, if it were not directly or indirectly controlled by the registered investment company, would not be directly or indirectly under the control of a person who controls the registered investment company.

(3) Paragraph (a)(5) of this section shall not include (i) the registered investment company, or (ii) a person who (a) if it were not directly or indirectly controlled by the registered investment company, or (b) if 5 per centum or more of its outstanding voting securities were not directly or indirectly owned, controlled, or held with power to vote by the registered investment

company, would not be an affiliated person of a person described in paragraph (a)(2) or (3) of this section.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a-6)

[29 FR 6154, May 9, 1964, as amended at 44 FR 48658, Aug. 20, 1979]

### **§ 270.17a-7 Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.**

A purchase or sale transaction between registered investment companies or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers, is exempt from section 17(a) of the Act; *Provided, That:*

(a) The transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available;

(b) The transaction is effected at the independent current market price of the security. For purposes of this paragraph the “current market price” shall be:

(1) If the security is a “reported security” as that term is defined in rule 11Aa3-1 under the Securities Exchange Act of 1934 [17 CFR 240.11Aa3-1], the last sale price with respect to such security reported in the consolidated transaction reporting system (“consolidated system”) or the average of the highest current independent bid and lowest current independent offer for such security (reported pursuant to rule 11Ac1-1 under the Securities Exchange Act of 1934 [17 CFR 240.11Ac1-1]) if there are no reported transactions in the consolidated system that day; or

(2) If the security is not a reported security, and the principal market for such security is an exchange, then the

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last sale on such exchange or the average of the highest current independent bid and lowest current independent offer on such exchange if there are no reported transactions on such exchange that day; or

(3) If the security is not a reported security and is quoted in the NASDAQ System, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ; or

(4) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry;

(c) The transaction is consistent with the policy of each registered investment company and separate series of a registered investment company participating in the transaction, as recited in its registration statement and reports filed under the Act;

(d) No brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with the transaction;

(e) The board of directors of the investment company, including a majority of the directors who are not interested persons of such investment company,

(1) Adopts procedures pursuant to which such purchase or sale transactions may be effected for the company, which are reasonably designed to provide that all of the conditions of this section in paragraphs (a) through (d) have been complied with,

(2) Makes and approves such changes as the board deems necessary, and

(3) Determines no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures;

(f)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel; and

(g) The investment company (1) maintains and preserves permanently

in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (e) of this section, and (2) maintains and preserves for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described in paragraph (e)(3) of this section were made.

[46 FR 17013, Mar. 17, 1981, as amended at 58 FR 49921, Sept. 24, 1993; 66 FR 3758, Jan. 16, 2001]

### § 270.17a-8 Mergers of certain affiliated investment companies.

A merger, consolidation, or purchase or sale of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers shall be exempt from the provisions of section 17(a) of the Act; *Provided*, That:

(a) The board of directors of each such affiliated registered investment company participating in the transaction, including a majority of the directors of each registered investment company who are not interested persons of any registered investment company participating in the transaction, determine:

(1) That participation in the transaction is in the best interests of that registered investment company; and

(2) That the interests of existing shareholders of that registered investment company will not be diluted as a result of its effecting the transaction;

(b) Such findings, and the basis upon which the findings were made, are recorded fully in the minute books of each registered investment company; and

(c)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate